

August 19, 2008

Via ECF

The Honorable Claudia Wilken
District Judge
United States District Court for the Northern District of California
1301 Clay Street
Oakland, California 94612-5212

Re: *California Restaurant Association v. The County of Santa Clara, et al.*,
Case No. CV-08-03685 CW
*California Restaurant Association v. The City and County of San
Francisco, et al.*, Case No. CV-08-3247 CW
(related cases)

Dear Judge Wilken:

We represent Plaintiff California Restaurant Association (“Plaintiff” or “CRA”) in the above-referenced actions, which are related. Enclosed is a Proposed Order that addresses certain scheduling and procedural issues, several of which have been the subject of letters by the parties sent to the Court over the past two days. For the reasons stated below, Plaintiff respectfully requests that the Court enter the Proposed Order.

1. Paragraphs 1 and 2 of the Proposed Order: These paragraphs provide that CRA may file a consolidated reply memorandum in the related actions on or before August 22, 2008. Assistant County Counsel’s Miguel Marquez’s letter, dated August 18, 2008, which was sent to the Court late yesterday in the *Santa Clara* action, states that Defendants in *California Restaurant Association v. County of Santa Clara, et al.* (the “*Santa Clara* case”) and *California Restaurant Association v. City and County of San Francisco, et al.* (the “*San Francisco* case”) do not object to CRA’s filing of a consolidated reply brief covering both cases on August 22, 2008. Accordingly, this provision is agreed to by the parties.
2. Paragraph 3 of the Proposed Order: This paragraph provides that CRA’s consolidated reply memorandum shall be no more than 45 pages in length. Plaintiff requests an enlargement of the page limit on its combined reply memorandum because it is facing anywhere from 140 to 170 pages of briefing in opposition to its motion for a preliminary injunction, in addition to hundreds of pages of factual affidavits and supporting exhibits. The 140 to 170 pages of briefing consists of a 35-page brief filed by the City and County of San Francisco in the *San Francisco* case, three briefs filed by three separate sets of

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amici, to which CRA consented, in the *San Francisco* case -- (1) Professor Robert Post of Yale University and Jennifer Pomeranz of the Rudd Center for Food Policy and Obesity; (2) Public Citizen, Center for Science in the Public Interest; and (3) the City of New York, on behalf of numerous county and municipal entities. In addition, the City and County of San Francisco attached yet another *amicus* brief to its opposition papers -- the *amicus* brief filed by the Food and Drug Administration in the U.S. Court of Appeals for the Second Circuit in *NYSRA v. New York City Department of Health*, 08-1892-cv, the New York city menu labeling case. All of this briefing adds up to roughly 140 pages, and CRA has not yet even received the opposition brief of the *Santa Clara* defendants, which is due today. Pursuant to an order entered by Judge Huber in Santa Clara Superior Court, the *Santa Clara* defendants are permitted to file an opposition brief of up to 30 pages. Therefore, CRA is faced with responding to up to 170 pages of briefing filed against it by five separate sets of entities in these related actions.

CRA submits that under these circumstances, good cause exists for leave for this enlargement of the page limit. These cases raise four separate constitutional claims and present multiple complex statutory and regulatory issues. Plaintiff believes that its briefing of these issues will be helpful to the Court. Rather than separately responding to each of the distinct arguments posed by defendants and their *amici*, Plaintiff proposed consolidating its responses into a single reply memorandum. Plaintiff respectfully requests that the Court order that Plaintiff may submit a consolidated reply brief that is no more than 45 pages in length.

Defendants in both cases have refused to consent to CRA's request for a 45-page limit. Instead, defendants each notified us today that each would consent to a page limit of only twenty-five pages for the consolidated reply brief, -- in other words, they "consent" to a page limit that provides CRA with fewer pages than CRA would have been entitled to without the consolidation.

3. Paragraph 4 of the Proposed Order: This paragraph provides that the hearing on CRA's motion for a preliminary injunction in the *Santa Clara* case and the *San Francisco* case shall be held on August 28, 2008, and that the hearing presently set for September 4, 2008 in the *San Francisco* case shall be vacated. This is in accord with the Court's August 15, 2008 Order Concerning Hearing On Plaintiff's Motion For A Preliminary Injunction, which provides that the *San Francisco* defendants have until August 21, 2008 to inform the Court if they wish to appear and be heard at the August 28 hearing. Today, the *San Francisco* defendants advised CRA by electronic mail that they do intend to participate in the August 28 hearing. Therefore, pursuant to the August 15 Order, the

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September 4 hearing date should be vacated, and both motions in the related cases should be heard together on August 28.

For the reasons stated above, CRA respectfully requests that the Court enter the Proposed Order.

Respectfully submitted,

/s/

Trenton H. Norris

Enclosure

cc: Tara Steeley, Esq.
Miguel Marquez, Esq.

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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 OAKLAND DIVISION

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10 CALIFORNIA RESTAURANT
ASSOCIATION,

11 Plaintiff,

12 v.

13 THE CITY AND COUNTY OF SAN
FRANCISCO and THE SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH,

14 Defendants.
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Case No. CV-08-03247 (CW), and
Case No. CV-08-03685 (CW)

16
17 **[PROPOSED] ORDER ON**
18 **MANAGEMENT OF**
19 **RELATED CASES**

20 CALIFORNIA RESTAURANT
ASSOCIATION,

21 Plaintiff,

22 v.

23 THE COUNTY OF SANTA CLARA and
THE SANTA CLARA COUNTY PUBLIC
HEALTH DEPARTMENT,

24 Defendants.
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The Honorable Claudia Wilken

Complaints filed: July 3 and July 22, 2008,
respectively

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2 WHEREAS the above-captioned cases have been designated as related matters, and
3 WHEREAS it is in the interest of judicial economy to coordinate the filings submitted by
4 all parties to these matters,

5 NOW, THEREFORE, **IT IS HEREBY ORDERED:**

- 6 1. Plaintiff shall submit one consolidated reply memorandum, in further support of
7 its motion for declaratory relief and a preliminary injunction, in response to all
8 filings submitted by the defendants and *amici* in the related matters.
9 2. Plaintiff's consolidated reply memorandum shall be submitted on August 22,
10 2008.
11 3. Plaintiff's consolidated reply memorandum shall not exceed forty-five pages in
12 length, exclusive of the caption page, table of contents, table of authorities,
13 declarations, and exhibits.
14 4. Pursuant to this Court's Order Concerning Hearing on Plaintiff's Motion for a
15 Preliminary Injunction, dated August 15, 2008, oral argument shall be held on the
16 related matters on August 28, 2008 at 2:00 PM, and all parties shall appear and be
17 heard. Pursuant to that same Order, the hearing presently scheduled for
18 September 4, 2008, in Case No. CV-08-03247 is vacated.

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20 IT IS SO ORDERED:

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22 DATED: _____
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25 UNITED STATES DISTRICT COURT JUDGE
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